

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KIRA WAHLSTROM,

Plaintiff,

v.

C.A. NO. 1:22-cv-10792-RGS

DAVID J. HOEY, LAW OFFICES OF
DAVID J. HOEY, P.C., DON C. KEENAN,
D.C. KEENAN & ASSOCIATES, P.C. d/b/a
THE KEENAN LAW FIRM, P.C., AND
KEENAN’S KIDS FOUNDATION, INC.,

Defendants.

ANSWER OF KEENAN’S KIDS FOUNDATION

Defendant Keenan’s Kids Foundation (“KKF”) answers the Plaintiff’s First Amended Complaint as follows:

INTRODUCTION

1. As the allegations pertain to KKF, KKF denies them. As to the remaining allegations in this paragraph, KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

2. As the allegations pertain to KKF, KKF denies them. As to the remaining allegations in this paragraph, KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

THE PARTIES

3. KKF admits the truth of the allegations of this paragraph.

4. KKF admits the truth of the allegations of this paragraph.
5. KKF admits the truth of the allegations of this paragraph.
6. KKF admits that Keenan has places of business in Florida and Georgia.

Otherwise, KKF denies the allegations in this paragraph.

7. KKF admits that Keenan has places of business in Florida and Georgia.

Otherwise, KKF denies the allegations in this paragraph.

8. KKF admits the truth of the allegations of this paragraph.

JURISDICTION AND VENUE

9. KKF denies the allegations in this paragraph.
10. KKF denies the allegations in this paragraph.

FACTS

The Underlying Premises Liability Case and Fee Agreements for that Case

11. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
12. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
13. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
14. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
15. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

16. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

17. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

18. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

19. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

20. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

21. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

22. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

23. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

24. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

25. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

26. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

27. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

28. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

29. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

Defendants' Trial Misconduct Resulting in a New Trial Motion and Appeal both Substantially Delaying Payment to Plaintiff Wahlstrom

30. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

31. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

32. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

33. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

34. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

35. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

36. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

37. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

38. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

Attorney's Lien Dispute

39. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

40. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

41. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

42. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

43. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

44. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

45. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

Improper Fees Charged to Ms. Wahlstrom and Taken
by Defendants from Monies Held in Trust for Her

46. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

47. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

48. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

49. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

50. As the allegations pertain to KKF, KKF denies them. As to the remaining allegations in this paragraph, KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

Improper Expenses Charged to Ms. Wahlstrom and Taken
by Defendants from the Monies Held in Trust for Her

51. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

52. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

53. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

54. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

55. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

The O'Toole Lawsuit

56. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

57. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

58. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

59. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

60. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

61. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

62. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

63. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

64. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

65. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

66. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

67. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

68. KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

Defendants' Willful and Knowing Misconduct

69. As the allegations pertain to KKF, KKF denies them. As to the remaining allegations in this paragraph, KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

70. As the allegations pertain to KKF, KKF denies them. As to the remaining allegations in this paragraph, KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

71. As the allegations pertain to KKF, KKF denies them. As to the remaining allegations in this paragraph, KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

72. As the allegations pertain to KKF, KKF denies them. As to the remaining allegations in this paragraph, KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

73. As the allegations pertain to KKF, KKF denies them. As to the remaining allegations in this paragraph, KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

74. As the allegations pertain to KKF, KKF denies them. As to the remaining allegations in this paragraph, KKF lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

CAUSES OF ACTION
COUNT I
VIOLATIONS OF M.G.L. CHAPTER 93A, SECTION 9
(Defendants Hoey, Hoey Law, Keenan and Keenan Law)

75. KKF repeats, realleges, and incorporates all of the above responses.

76. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

77. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

78. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

79. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

80. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

81. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

82. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

COUNT II
BREACH OF FIDUCIARY DUTY
(Defendants Hoey, Hoey Law, Keenan, and Keenan Law)

83. KKF repeats, realleges, and incorporates all of the above responses.

84. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

85. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

86. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

87. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

COUNT III
FRAUD
(Defendants Hoey, Hoey Law, Keenan, and Keenan Law)

88. KKF repeats, realleges, and incorporates all of the above responses.

89. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

90. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

91. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

92. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

93. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

94. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

95. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

96. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

97. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

COUNT IV
CONVERSION

(Defendants Hoey, Hoey Law, Keenan, Keenan Law, and Keenan's Kids Foundation)

98. KKF repeats, realleges, and incorporates all of the above responses.

99. KKF denies the allegations in this paragraph.

100. KKF denies the allegations in this paragraph.

101. KKF denies the allegations in this paragraph.

102. KKF denies the allegations in this paragraph.

COUNT V
DEMAND FOR ACCOUNTING

(Defendants Hoey, Hoey Law, Keenan, Keenan Law)

103. KKF repeats, realleges, and incorporates all of the above responses.

104. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

105. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

106. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

107. These allegations are directed at another defendant. To the extent a further answer is required, KKF denies the truth of the allegations in this paragraph.

COUNT VI
MONEY HAD AND RECEIVED
(Defendant Keenan's Kids Foundation)

108. KKF repeats, realleges, and incorporates all of the above responses.

109. KKF denies the allegations in this paragraph.

110. KKF denies the allegations in this paragraph.

111. KKF denies the allegations in this paragraph.

AFFIRMATIVE DEFENSES

The Complaint fails to state a claim upon which relief may be granted.

Second

The action is late and barred by the applicable statutes of limitation.

Third

The action is barred or reduced by the doctrines of voluntary payment, estoppel, res judicata, waiver, unclean hands, accord and satisfaction, and failure to mitigate.

Fourth

KKF at all times acted in good-faith reliance on applicable legal principles and authorities.

Fifth

Any damages or losses claimed or incurred by the Plaintiff were caused by the acts of third parties that were unforeseeable and beyond the control of KKF and are not the responsibility of KKF.

Sixth

Any damages or losses claimed or incurred by the Plaintiff were the result of supervening and intervening causes unrelated to the conduct of KKF.

Seventh

The Plaintiff failed to mitigate any damages or losses that she claims.

Eighth

Any damages or losses that the Plaintiff may have suffered were not proximately caused by KKF but were caused by a person or entity for which KKF is not responsible.

Ninth

The action is barred because KKF did not cause the Plaintiff harm.

Tenth

The Plaintiff has failed to comply with procedural prerequisites to a 93A suit.

Dated: October 14, 2022

Respectfully submitted:

/s/ Danni L. Shanel

William M. Taylor, Esq. (Bar No. 624981)

Danni L. Shanel, Esq. (Bar No. 710378)

John M. Bowler (*pro hac vice motion to be filed*)

Lindsay Mitchell Henner (*pro hac vice motion to be filed*)

TROUTMAN PEPPER

HAMILTON SANDERS LLP

125 High Street, 19th Floor

Boston, MA 02110

Telephone: (617) 204-5100

William.Taylor@troutman.com

Danni.Shanel@troutman.com

John.Bowler@troutman.com

Lindsay.henner@troutman.com

Attorneys for Keenan's Kids Foundation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 14, 2022, a true copy of the foregoing Opposition to Plaintiff's Motion to Dismiss or Remand was served on all registered participants via ECF, and served via First Class Mail upon:

Bridget A. Zerner
John J.E. Markham , II
Markham Read Zerner LLC
One Commercial Wharf West
Boston, MA 02110
617-523-6329
Fax: 617-742-8604
bzerner@markhamreadzerner.com
jmarkham@markhamreadzerner.com

Attorneys for Plaintiff Kira Wahlstrom

Susan M. Silva
John J. O'Connor
Peabody & Arnold LLP
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210-2261
(617) 951-2100
ssilva@peabodyarnold.com
joconnor@peabodyarnold.com

*Attorneys for Defendant Don C. Keenan,
and D.C. Keenan & Associates, P.C.*

Christine A. Knipper
Thomas A. Murphy
Wilson Elser Moskowitz Edelman & Dicker,
LLP
260 Franklin Street
14th Floor
Boston, MA 02110-3112
617-422-5300
Fax: 617-423-6917
christine.knipper@wilsonelser.com
thomas.murphy@wilsonelser.com

*Attorneys for Defendant David J. Hoey and
Law Offices of David J. Hoey*

Date: October 14, 2022

/s/ Danni L. Shanel

Danni L. Shanel